



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33901196

Date: OCT. 02, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a musician, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner meets at least three of the ten initial evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals who: have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; seek to enter the United States to continue work in the area of extraordinary ability; and demonstrate that their entry will offer substantial prospective benefits to the country.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary’s achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and authorship of scholarly articles).

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a guitarist, composer and educator who regularly records and performs with his own jazz groups. The record reflects that he also frequently collaborates with other artists, most notably, as a guitarist on two Latin Grammy-nominated albums by Roxana Amed. The Petitioner completed his undergraduate education and an advanced diploma in music in Australia and earned his masters and doctoral degrees in music from the [REDACTED] where he has since served as an instructor. He states that he intends to continue working as a musician in the United States.¹

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of these criteria, relating to judging the work of others in his field and display of his work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(j)(3)(iv) and (vii). The record supports the Director's determination that the Petitioner meets these two criteria.

On appeal, the Petitioner asserts that he also meets the criteria relating to published materials about him in professional or major trade publications or major media and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (vi).² Further, he contends that the Director erroneously failed to consider comparable evidence under 8 C.F.R. § 204.5(h)(4), noting that the decision did not address his submission of several letters of support from renowned musicians.

After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated that he meets at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

¹ The record shows the Petitioner has been working in the United States for several years pursuant to O-1B nonimmigrant status. We acknowledge that this status is granted to persons of extraordinary ability in the arts. However, the nonimmigrant and immigrant extraordinary ability categories have different definitions, evidentiary requirements, and standards for persons in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 classification means "distinction." 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. Regardless, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

² Although the Petitioner previously claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), relating to lesser nationally or internationally recognized awards, he does not contest the Director's decision relating to this criterion on appeal or otherwise refer to it in his appeal brief. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

1. Published Materials

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), a petitioner must submit “published material about [them] in professional or major trade publications or other major media relating to [their] work in the field for which classification is sought.” This evidence must include the title, date and author of the material, and any necessary translation.

Evidence submitted in support of this criterion may include documentation such as print or online newspaper or magazine articles, popular or academic journal articles, books, textbooks, similar publications, or a transcription of professional or major audio or video coverage of the person and the person’s work. *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual> (discussing how USCIS evaluates evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)). In evaluating whether a submitted publication is a professional publication, major trade publication or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership or viewership (for major trade publications and other major media). *Id.*

The record reflects that the Petitioner provided 15 exhibits in support of this criterion. This evidence included articles about the Petitioner published online by AllEvents.in, JazzEncounters.com, Voyagemia.com, Australianjazz.net, Jazzlocal32.com, JazzdaGama.com, ModernJazzToday.com, JazzBluesFlorida.com, and *Listen/Hear Collective*. He also submitted his artist/musician profile pages from the websites *All About Jazz*, *Indaba Music*, and *RAW*. Finally, the Petitioner submitted reviews of [redacted] albums [redacted] which were published by LatinJazzNet.com.

In a request for evidence (RFE), the Director addressed each evidentiary exhibit, noting that some were missing the required date and author while some lacked a URL address. The Director also observed that the record did not include evidence to demonstrate that any of the materials were published in “a form of major media.” The Director advised the Petitioner that to demonstrate the publications qualify as professional or major trade publications or other major media, he may submit comparative circulation data and/or evidence regarding the intended audience of the publications.

In response, the Petitioner submitted additional information regarding the websites AllEvents.in, AllAboutJazz.com, and VoyageMIA.com. In an accompanying cover letter, he stated the additional evidence establishes that “these are major media sources.” The Director reviewed the additional evidence but noted that the article from AllEvents.in did not include the date of publication or the author, while the material from *All About Jazz* appeared to be an artist profile page (with no author or date of publication) rather than a published article. The Director concluded the evidence submitted in response to the RFE was insufficient to demonstrate that any of the submitted articles were published in “a form of major media.”

On appeal, the Petitioner asserts that the Director erroneously failed to consider whether the submitted articles were published in professional or major trade publications, and instead improperly imposed a requirement that only “major media” can satisfy the plain language of this regulation. He contends that the submitted articles “were included in professional and trade publications specifically focused on jazz” which cater to “jazz musicians.” The Petitioner also asserts that the Director overlooked

USCIS policy guidance instructing officers that an individual and their work need not be the *only* subject of the published material when reviewing evidence submitted in support of this criterion.

Turning to the submitted evidence, we agree with the Director's determination that the two LatinJazzNet.com articles reviewing [redacted] albums [redacted] do not meet the plain language of this criterion. Both articles mention the Petitioner's name as one of the guitarists that played on Ms. [redacted] albums, but the articles are not about him. A petitioner and their work need not be the only subject of the published material, but any published material that covers a broader topic should include a substantial discussion of the petitioner and their work in the field in order to meet the plain language of this criterion. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(4). Here, the two articles from LatinJazzNet.com did not include this substantial discussion of the Petitioner and his work.

The Petitioner also submitted his online artist/musician profile pages from *All About Jazz*, *Indaba Music*, and *RAW*. These pages do not identify a date or author; rather it appears that these websites allow member musicians to create and maintain their own artist pages, which serve, in part, as a promotional tool.³ Although the Director noted in the decision that these materials appear to be self-created artist profiles rather than articles written and published by the websites about the Petitioner and his work, the Petitioner does not address this observation on appeal. We agree with the Director's determination that these materials do not meet the plain language of the regulation.

As noted, the Petitioner contends on appeal that the submitted articles appeared in "professional and trade publications specifically focused on jazz." While he appears to suggest that every website with an apparent focus on jazz music qualifies as a professional or trade publication in his field, the record does not contain adequate support for this claim. In evaluating whether a submitted publication is a professional or trade publication, relevant factors include evidence relating to the publication's intended audience. The evidence should show that the intended audience is professionals in the Petitioner's field. For example, a magazine or website published by a professional association or industry trade group may be a qualifying medium intended for professionals or experts in a certain field.

The Petitioner submitted three articles about him from the websites Jazzlocal123.com and JazzdaGama.com, but the limited information provided regarding these online publications indicates they are blogs and not professional or trade publications. He also submitted a copy of an interview that was published online by *Listen/Hear Collective*, but there is no date, author or URL provided, or supporting evidence regarding the intended audience for this website. However, based on the screenshots provided, it appears the publisher is a record label and not a professional or major trade publication.

The record includes articles about the Petitioner published by AustralianJazz.net, ModernJazzToday.com, and JazzandBluesFlorida.com. These websites are described in the supporting evidence, respectively, as "an online publication about Australian jazz and improvised music," "a radio program that focuses on today's jazz," and "a prominent and trusted paid content

³ For example, the *All About Jazz* website provides instructions on how to create a free musician page and states "we've amassed over 143,000 musician pages at All About Jazz courtesy of musicians, publicists, record labels and super fans." *See* "Jazz Musicians," <https://allaboutjazz.com/musicians>.

promotion platform dedicated to the vibrant jazz and blues scene in Florida.” The Petitioner has not submitted sufficient evidence of the intended audience of these publications to demonstrate that they qualify as “professional or major trade publications” under the plain language of this criterion. Again, the Petitioner’s unsupported proposition that any jazz-related website qualifies as one of these types of media is not persuasive.

The two remaining articles were published by AllEvents.in and VoyageMIA.com. The AllEvents.in article provides some biographical information about the Petitioner and previews his [redacted] [redacted] show held in [redacted] on May 12 of an unidentified year. The article does not include the author or date of publication. Further the evidence submitted about AllEvents.in does not demonstrate that website qualifies as a professional or major trade publication. Finally, based on the submitted evidence, VoyageMIA.com is a local magazine focused on Miami’s “small businesses, independent artists and entrepreneurs” and “local institutions” rather than a professional or major trade publication.

For all the reasons discussed, the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

2. Authorship of Scholar Articles

To meet this criterion, a petitioner must (1) provide evidence that they have authored scholarly articles in the field and (2) demonstrate that the articles appeared in professional publications, major trade publications or major media publications. In the academic arena, a scholarly article reports on original research, experimentation or philosophical discourse, will typically have footnotes, endnotes or a bibliography and may include charts, graphs, videos, or pictures as illustrations of the concepts expressed in the article. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner claims eligibility under this criterion based on his doctoral dissertation titled [redacted] [redacted] He provided the abstract for his dissertation, evidence that it was registered with the U.S. Copyright Office, and evidence that it is available for viewing or download in the “open access” section of the website *Scholarship* [redacted] owned by the [redacted].⁴ *Scholarship* [redacted] is described in the record as “the institutional repository and research information hub of the [redacted] which includes “research and scholarly works prepared by faculty, students, and staff of the university.” Based on information provided on the website, the university’s students may upload or “deposit” their own academic work in the repository with the approval of a sponsoring department or faculty member.⁵

The Director determined that the *Scholarship* [redacted] website does not qualify as “major media.” On appeal, the Petitioner maintains that the Director failed to consider whether the [redacted] website is a “professional publication.” He asserts that the evidence “unequivocally establishes *Scholarship* [redacted] is a professional website which features scholarly works.”

⁴ The Petitioner also provided evidence that his dissertation was posted at www.theguitar-blog.com but has not pursued a claim that this blog is a professional or major trade publication or other major medium.

⁵ See “Scholarship [redacted] FAQs,” [https://guides.library\[redacted\]/scholarship\[redacted\]](https://guides.library[redacted]/scholarship[redacted])

In support of his claim, the Petitioner refers to a non-precedent decision in which we determined that an individual satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi) by providing evidence that their Ph.D. dissertation had been published in a “digital library.” However, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

Upon review, we conclude that the Petitioner has not met this criterion. The record does not contain evidence that *Scholarship* [redacted] qualifies as a professional or major trade publication. In evaluating whether a submitted publication is a professional publication or major trade publication, relevant factors include the intended audience of the publication. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1). Here, the evidence does not establish the intended audience of [redacted] institutional repository or support a determination that it is intended for persons working in a particular profession. Further, the Petitioner has not articulated how the [redacted] general “institutional repository” is comparable to the examples of qualifying professional publications provided in USCIS policy guidance which include academic journals, “professionally relevant peer-reviewed journals,” books, textbooks, and professional online publications. *See generally id.*

Finally, there is insufficient evidence that *Scholarship* [redacted] which accepts uploads or “deposits” of work from students and staff and makes them searchable and accessible online, can be considered the “publisher” of these works. The record does not contain sufficient information regarding this “deposit” process for us to determine whether *Scholarship* [redacted] is a publication much less a professional publication as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Accordingly, for the reasons discussed, the Petitioner has not demonstrated that he meets this criterion.

B. Comparable Evidence

On appeal, the Petitioner asserts the Director “erroneously failed to consider additional comparable evidence” to establish his eligibility. Specifically, he emphasizes he “submitted numerous letters of support from other renowned musicians and professionals attesting to [his] extraordinary abilities,” noting that the evidence was “wholly ignored . . . without any mention or justification.”

The regulation at 8 C.F.R. § 204.5(h)(4) allows petitioners the opportunity to submit comparable evidence to establish eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person’s occupation. Here, the Petitioner did not indicate he was submitting the reference letters as comparable evidence to satisfy one of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), nor did he otherwise indicate their relevance to one or more of these criteria. General claims that USCIS should accept witness letters as comparable evidence are not persuasive. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

We acknowledge the Petitioner’s claim that the letters provide relevant information regarding his expertise and his level of acclaim and recognition in his field. Such evidence is relevant to the final merits determination and would be taken into consideration had the Petitioner demonstrated that he meets the initial evidence requirement of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, the Petitioner has not established that the Director erred by not evaluating the reference letters as comparable evidence under 8 C.F.R. § 204.5(h)(4).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.